In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 884

TRU-LINE METAL PRODUCTS COMPANY AND TRU-LINE SCREW PRODUCTS, INCORPORATED, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 11–13) is reported at 324 F. 2d 614. The Board's Decision and Order (Pet. 14–45) are reported at 138 NLRB 964.

JURISDICTION

The decision of the court of appeals was rendered on November 26, 1963, and the court's decree was entered on the same date (Pet. 2). On February 24, 1964, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including March 5, 1964. The petition was filed on March 2, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's findings that the Company discharged two employees because of their union activities, engaged in surveillance of union activities, and threatened to close the plant if the employees became unionized.

STATUTE INVOLVED

The relevant statutory provisions are set forth at pp. 3–4 of the petition.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

Tru-Line Metal and Tru-Line Screw are commonly owned and controlled corporations occupying the same plant, as well as some additional space rented in a building located across the street (B.A. 4a; 37a–38a).[1] At the time of the events herein, Tru-Line Metal and Tru-Line Screw, together, had 36 employees—24 women and 12 men. All employees were supervised by Norman Finlayson, president of both companies (B.A. 17a, 18a; 37a, 38a, 83a, 98a–99a, 103a, 107a). In August 1961, employee Norman Reed obtained some authorization cards from the Union[2] (B.A. 4a; 53a,

[1] "B.A." references are to the Board's Appendix printed for the use of the court below and filed with the petition.

True-Line Screw produces screw machine parts (B.A. 17a; 101a). Its entire output is purchased by Tru-Line Metal, which manufactures metal products for sale and distribution in interstate commerce (B.A. 17a; 102a–103a). Before the Board, the two firms were treated as a single employer (B.A. 18a); we shall refer to them collectively as the Company.

[2] Local 408, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL–CIO.

55a). Reed signed a card and gave the rest to Ralph Clark who, in turn, gave some to Loretta Hall (B.A. 5a; 56a, 67a, 68a, 77a). Clark asked the Company's male employees to sign cards, and Hall solicited the women. Clark and Hall spoke to most, if not all, the employees, making no attempt to keep their activity secret (B.A. 5a; 77a–78a, 97a–98a).

Shortly after signing the union authorization card, Reed informed President Finlayson that he had joined the Union (B.A. 5a; 84a–85a). Under questioning by Finlayson, he confessed that he "was the one who started the trouble in the shop about the union" (B.A. 5a; 57a, 84a–85a). Shortly thereafter, Reed was given an opportunity to earn extra money from a part-time job secured for him by an official of the Company (B.A. 5a; 58a). The day after Reed's confession, President Finlayson informed Clark that he was laid off "due to lack of work in [his] department" (B.A. 5a; 68a–69a). About the same time, Supervisor Wolcott informed Hall of her layoff "because of lack of work" (B.A. 5a; 78a). The workload had in fact increased at about that time (Pet. 16).

No other employees were laid off at the time of the layoff of Clark and Hall. Both Clark and Hall had more seniority than many other employees, and neither had at any time been reprimanded for unsatisfactory work or conduct (B.A. 5a–6a; 67a, 76a–77a, 98a–99a). Clark had been given a wage increase only a short time before his layoff (B.A. 6a; 67a). Hall

was one of the Company's highest paid and most versatile female employees (B.A. 5a; 76a–77a). After the two employees were laid off, Reed, who had less seniority by a year than Clark, was given Clark's job at an hourly wage 10 cents higher than that which Clark had been paid (B.A. 5a; 51a–52a, 54a–55a, 59a, 61a, 67a, 98a–99a).

A few days after the layoff, Clark and Hall arranged to meet union representatives Bocks and Miller for the purpose of making plans for further union solicitation (B.A. 8; 39, 41). The meeting was scheduled to take place on a street corner near the plant at the time the shifts changed (B.A. 8; 40, 70–71). Bocks arrived early, but, when he observed President Finlayson leaving the plant in his automobile, he drove away. Finlayson followed Bocks for several blocks (B.A. 8; 41). Bocks eluded Finlayson and returned to the appointed meeting place, where he picked up Clark and Hall. Finlayson appeared again and followed as Bocks drove around the plant several times and then parked. Finlayson continued to observe by repeatedly driving past Bocks' car (B.A. 8; 42–43, 72–73, 81–82, 88). After attempting, unsuccessfully, to talk to some of the Company's employees, Bocks and his companions abandoned the effort because of Finlayson's continued surveillance (B.A. 8; 43).

After the layoffs, Superintendent Kondzer told employee Warren Fairbanks that, "if the union gets in, the Company has to fold up, we'll all be without a job" (B.A. 8, 21; 48, 96).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board (one Member dissenting) found that Clark and Hall were laid off because of their role in the union campaign, in violation of Section 8(a)(3) of the Act. Disagreeing with the Trial Examiner who had recommended dismissal of the complaint on the ground that there was no direct evidence of Company knowledge of the employees' union activity, the Board concluded that there was ample other evidence from which Company knowledge could be inferred. (B.A. 6a–8a.) It also found two other violations of Section 8(a)(1) of the Act: President Finlayson's surveillance of the meeting in the vicinity of the Company plant; and Supervisor Kondzer's threat that, "if the union gets in, the Company has to fold up, we'll all be without a job" (B.A. 8a–9a).

The Board's order requires the Company to cease and desist from the unfair labor practices found, and to reinstate with back pay the employees discriminated against (B.A. 10a–11a).

C. THE COURT OF APPEALS DECISION

The court of appeals upheld the Board's findings as supported by substantial evidence and enforced its order in full (Pet. 11–13).

ARGUMENT

Petitioner acknowledges that its basic contention is that there "is not enough substantial evidence on the record considered as a whole" (Pet. 6) to support the Board's unfair labor practice findings. Such an is-

sue rarely warrants review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490–491. The court of appeals could quite properly sustain the Board even though the Board drew different inferences from the established facts than did the Trial Examiner. *Id.* at 494, 496; *Federal Communications Commission* v. *Allentown Broadcasting Corp.*, 349 U.S. 358, 363–364.

In any event, the record shows that Hall and Clark were the chief protaganists of the Union; their activities among their fellow employees were extensive and unconcealed; the plant is small with only 36 employees; the two employees were laid off the day following Reed's confession of union activities to President Finlayson; and, while the Company undertook to justify the layoffs upon the ground of lack of work, the workload had in fact increased about that time. In these circumstances, as the court below found (Pet. 12), the Board was fully justified in concluding that the Company knew of the activities of Clark and Hall on behalf of the union and laid them off because of these activities. Similarly, since both President Finlayson's surveillance of the Union organizer and the threat by Supervisor Kondzer occurred at the height of the Union organizing campaign (within a few days following the discriminatory layoff of the two principal organizers, Clark and Hall), it was reasonable for the Board to conclude that these actions tended to interfere with, restrain, and coerce the Company's employees in the exercise of their organizational rights, and thus violated Section 8(a)(1) of the Act.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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